

FARDEAU et al.

Appl. No. 10/538,715

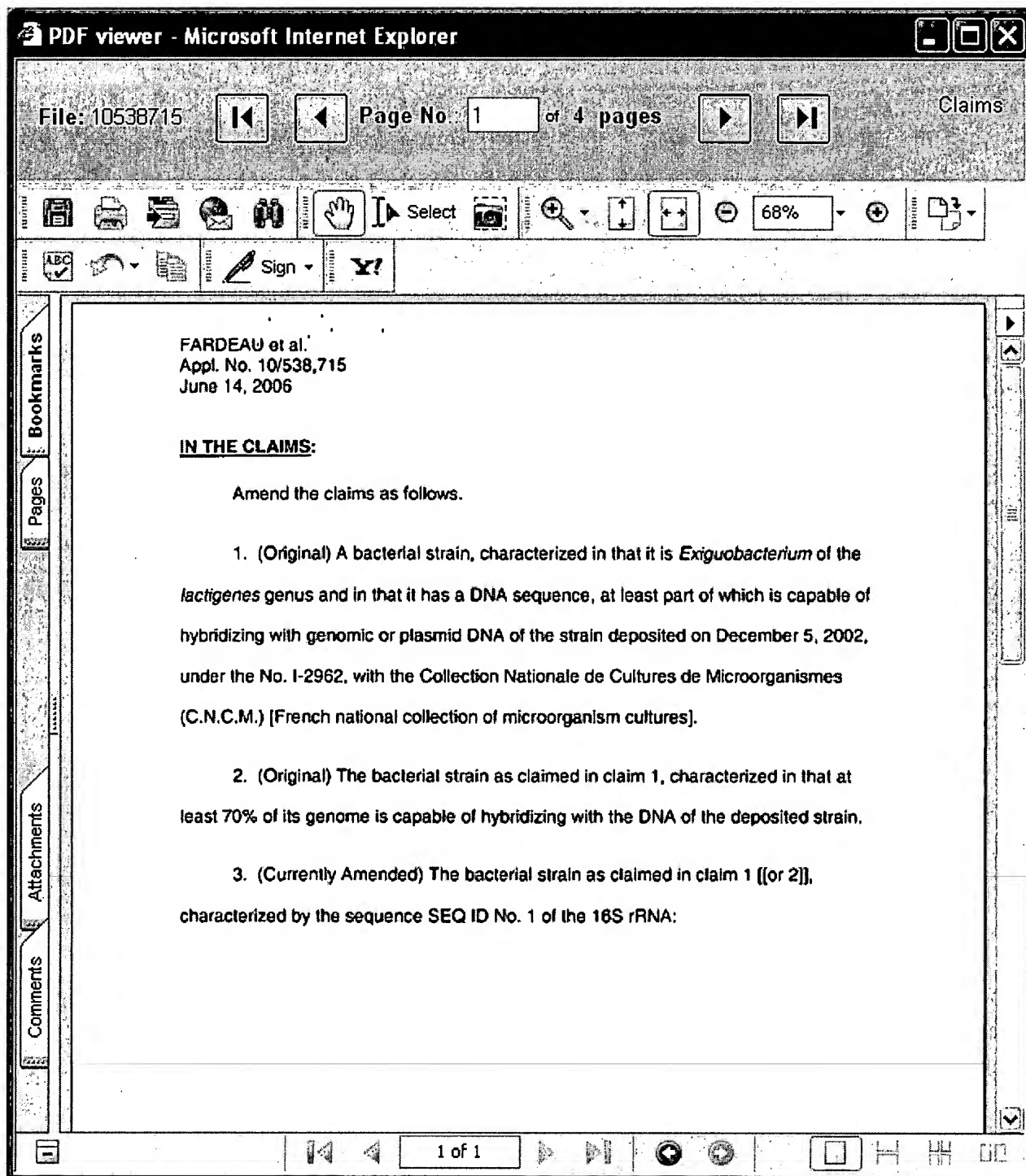
April 5, 2007

RESPONSE TO NOTICE OF NON-COMPLIANT AMENDMENT DATED MARCH 16, 2007

### **REMARKS**

The Notice of Non-compliant Amendment dated March 16, 2007 asserts that the Supplemental Amendment of June 14, 2006 did not include a complete listing of all of the claims.

With due respect, the undersigned submits that the Supplemental Amendment of June 14, 2006 contains a complete listing of all 11 pending claims. The following are screen shots from the PTO IFW version of the Supplemental Amendment of June 14, 2006 showing all 11 claims:





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5. (Currently Amended) The strain as claimed in claim 1 any one of claims 1 to 4, characterized by growth properties at temperatures of the order of 40 to 50°C, at a pH of 5.4 to 9.15, with an optimum for growth at 45°C, at a pH of approximately 7.

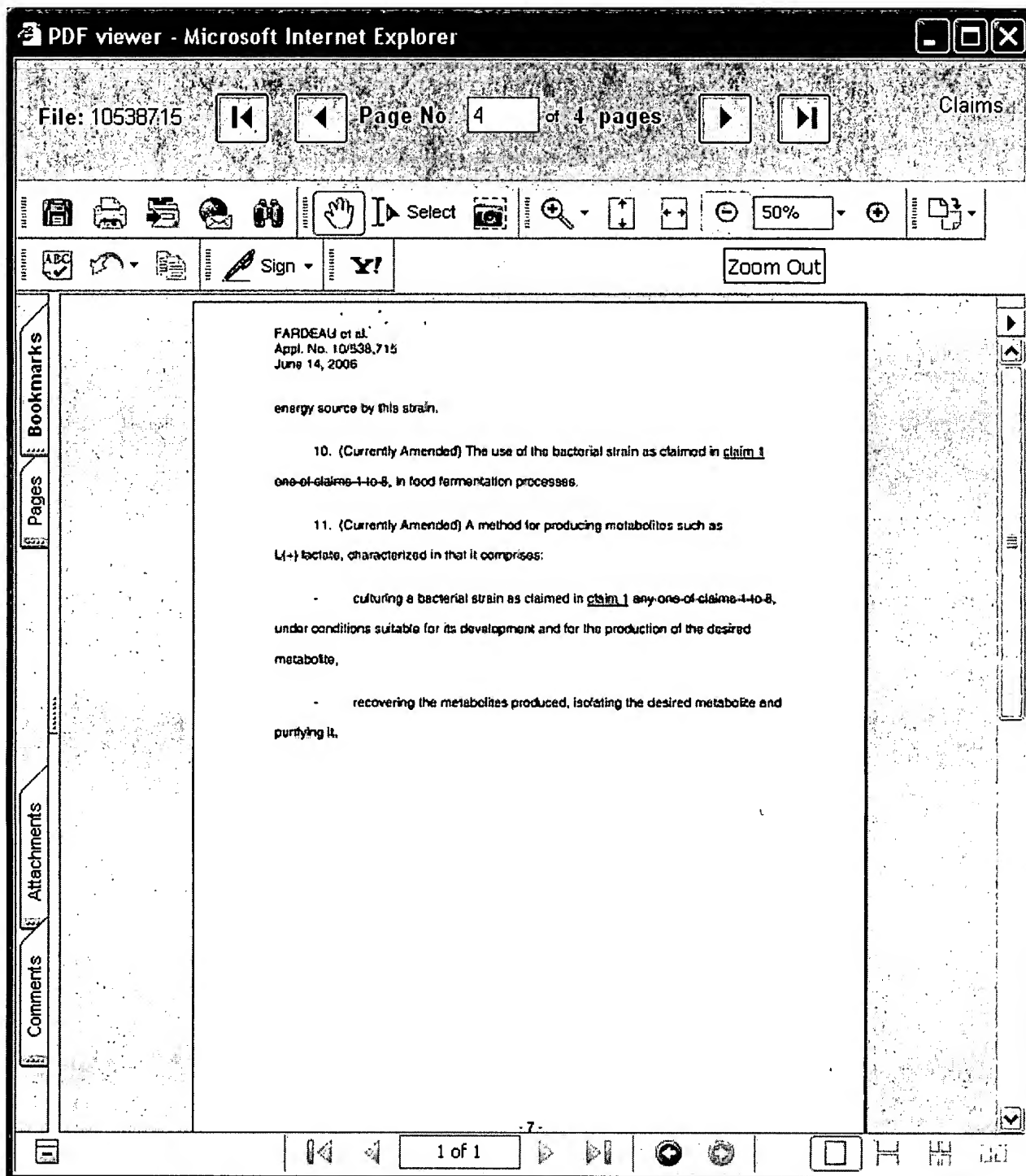
6. (Currently Amended) The bacterial strain as claimed in claim 1 any one of claims 1 to 5, characterized by a guanine plus cytosine content in its DNA of approximately 50 mol%.

7. (Original) A bacterial strain, characterized in that it is *Exiguobacterium* of the *lactigenes* genus and in that it has a DNA sequence, at least part of which is capable of hybridizing with genomic or plasmid DNA of the strain deposited on December 5, 2002, under the No. I-2962, at the Collection Nationale de Cultures de Microorganismes (C.N.C.M.), these strains being thermoresistant, saccharolytic and amylolytic and/or capable of producing L(+) Lactate, having growth properties at temperatures of the order of 40 to 50°C, at a pH of 5.4 to 9.15, with an optimum for growth at 45°C, at a pH of approximately 7, and a guanine plus cytosine content in its DNA of approximately 50 mol%.

8. (Original) The bacterial strain deposited with the C.N.C.M. on December 5, 2002, under the number I-2962.

9. (Currently Amended) A method for culturing the bacterial strain as claimed in claim 1 any one of claims 1 to 8, characterized in that the process is carried out under facultative anaerobic conditions, at a pH of approximately 5.4 to 9.15, at 37°C, in particular of 6.5 to 7.5, in a basic medium containing a sugar that can be used as an

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As is believed to have been discussed with the Examiner after receiving the Office Action of February 2, 2007, the originally-filed copy of application filed June 15,

2005 contains claims numbered 1-10 (i.e., a set of 10 claims) and the claims were amended in the international stage to insert a set of 11 claims (i.e., claims 1-11) attached as Annexes to the IPER.

The originally-filed application (i.e., filed June 15, 2005) was filed in the French language with the originally-filed set of 10 claims, also in the French language.

On June 14, 2006, a copy of the International Preliminary Examination Report (IPER), in the French language, with the Annexes thereto, in the French and English languages, was filed. The Annexes to the IPER contains the set of 11 claims (claims numbered 1-11) which formed the basis of the IPER. The set of 11 claims (claims 1-11) are believed to be the basis of the present application which entered the U.S. as a 371 U.S. national phase of the PCT.

On June 14, 2006, in response to the Notification of Missing Requirements dated February 14, 2006, the undersigned filed a complete copy of the originally-filed application, in English. The complete copy of the originally-filed application contained the 10 claims of the originally-filed application, as was believed to be required by the Rules. The following are screen shots from the PTO IFW of the originally-filed set of 10 claims filed in English on June 14, 2006 in response to the Notification of Missing Requirements.



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TGCAGATTCGACDCTGCACTCCCTGCGATGAGTCGATGCTACTATGTCAGCTCAGCTACTGCG  
 GTCAATACGT  
 TCTCGGCTTTATACATGAGGCGCTCAGCAGGAGCTTGCACACGCGCAATGCTGATGAGCTAGCC  
 TAAGTAGCTCA  
 GCTGCGGAGGTGGGCGAGATGATTTGGGTGATGCTGTAACAGGTAGCTGATGCGGAGGTGGGCTGA

or a sequence having more than 97% similarity with SEQ ID No. 1.

4. The bacterial strain as claimed in any one of claims 1 to 3, characterized in that it is thermo-resistant, saccharolytic and amylolytic and/or capable of producing L(+)-lactate.

5. The strain as claimed in any one of claims 1 to 4, characterized by growth properties at temperatures of the order of 40 to 50°C, at a pH of 5.4 to 9.15, with an optimum for growth at 45°C, at a pH of approximately 7.

6. The bacterial strain as claimed in any one of claims 3 to 5, characterized by a guanine plus cytosine content in its DNA of approximately 50 mol%.

7. The bacterial strain deposited with the C.N.C.M. on December 5, 2002, under the number I-2962.

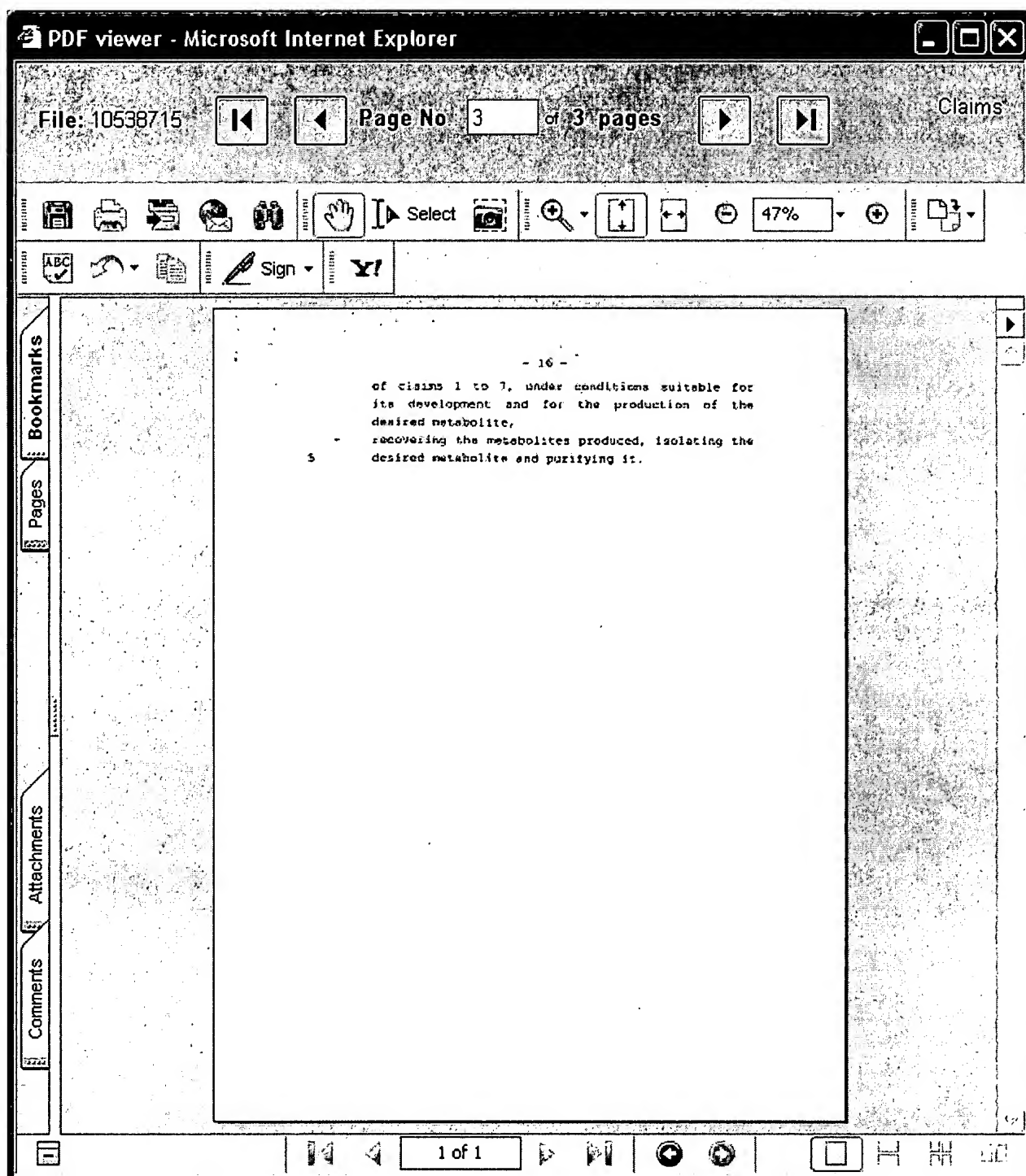
8. A method for culturing the bacterial strain as claimed in any one of claims 3 to 7, characterized in that the process is carried out under facultative anaerobic conditions, at a pH of approximately 5.4 to 9.15, at 37°C, in particular of 6.5 to 7.5, in a basic medium containing a sugar that can be used as an energy source by this strain.

9. The use of the bacterial strain as claimed in one of claims 1 to 7, in food fermentation processes.

10. A method for producing metabolites such as L(+)-lactate, characterized in that it comprises:

- culturing a bacterial strain as claimed in any one





Both the pending 11 claims (claims numbered 1-11) filed June 14, 2006 and the English translation of the originally-filed set of 10 claims (claims 1-10) filed June 14,

2006 are indexed in the PTO IFW as "Claims" and "Prosecution", apparently leading to some confusion in the Patent Office as to which set of claims are pending. The above set of 10 claims (claims 1-10) however are clearly indicated in the header as being a continuation of the PCT application page numbers. Moreover, the set of 11 claims (claims numbered 1-11 above) are clearly a part of the Amendment filed June 14, 2006.

A further copy of an English translation of the originally-filed specification was filed in response to a Notice of Non-Compliant Amendment dated November 3, 2005. The copy of the English translation of the originally-filed specification included originally filed claims 1-10 (i.e., the originally-filed set of 10 claims). The Notice of Non-Compliant Amendment dated November 3, 2005 indicated that the Amendment of June 14, 2006 was allegedly deficient in the amendments to the specification. Accordingly, all of the amendments to the specification made in the Amendment of June 14, 2006 were resubmitted.

As noted above, the Notice of Non-Compliant Amendment dated March 16, 2007 states, for the first time that the claim amendments of the Amendment filed June 14, 2006 were allegedly not in compliance with the Rules. As evidenced above, the Amendment of June 14, 2006 however (1) included a complete listing of all of the claims, (2) included the text of all pending claims, and (3) each claim was provided with a proper status identifier.

Pursuant to MPEP § 714 (II)(F)((A)), the present paper includes the corrected section of the Supplemental Amendment dated June 14, 2006. Other amendments and remarks of the Supplemental Amendment filed June 14, 2006 are not repeated herein

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as the Notice appears to only require submission of the corrected section of the Amendment. The Office is requested to advise the undersigned in the event more is required.

The Examiner is requested to contact the undersigned by telephone to discuss any further requirements in response to the Notice of Non-Compliant Amendment dated March 16, 2007.

An early and favorable Action on the merits is requested.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

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